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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,319	11/06/2003	Ranjan Perera	ARBG-004/07US 307197-2038	7997
58249 7590 09/11/2007 COOLEY GODWARD KRONISH LLP ATTN: Patent Group Suite 500 1200 - 19th Street, NW WASHINGTON, DC 20036-2402			EXAMINER QIAN, CELINE X	
			ART UNIT 1636	PAPER NUMBER
			MAIL DATE 09/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/702,319	PERERA ET AL.	
	Examiner	Art Unit	
	Celine X. Qian Ph.D.	1636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11.
Claim(s) withdrawn from consideration: 12-15.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Celine X Qian Ph.D.
Examiner
Art Unit: 1636

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but deemed unpersuasive. The demonstration of fragments of cOMT1700 may support for the description of claim 1, however, they do not provide sufficient descriptive support for the sequence having % identity to the claimed nucleotide sequence, the 20mer, 40mer and fragments that hybridize to said nucleotide sequences. SEQ ID NO:12, while having 98.9% to 1-1643 of SEQ ID NO:113, does not provide support for nucleic acid sequences having 75% homology with SEQ ID NO:12, 60, 1-1643, 1019-1643 of SEQ ID NO:113. It is recognized in the prior art that cis element is only potential binding sites for transcription factors. Their ability to direct the tissue specific promoter activity does not only rely on the presence of potential binding sites, but also the distance and sequence in between that contributes to the secondary structures that affect chromatin conformation. As indicated by Applicant's own demonstration, the minimal promoter activity were detected in the 119 bp fragment, not the 99 and 66 fragment. As such, the specification failed to demonstrate any 20, 40, 60mer...etc, that is able to direct tissue specific expression. The specification does not demonstrate any fragments that hybridizes to the recited fragments and have the tissue specific promoter activity. The example 14 of the training material does not apply in the instant case because it is directed to variants of a protein, which has known enzymatic activity, and the structure elements corresponding to the function is sufficiently described. In the instant case, such correlation does not exist to the tissues specific promoter function and the broadly claimed genus of nucleic acid sequences which have different sizes ranging from 20mer to the full length promoter and those fragments which have percent homology with the promoter. As such, for reasons discussed in the previous office action and above, this rejection would still apply to claim 2 and its dependent claims. With regard to the argument citing MPEP821.04(a), it is reminded that the relationship between the elected group and claims 12-14 is not generic, linking claim or subcombination as evidenced by the restriction requirement mailed out on 6/1/06. As such, they will not be rejoined upon allowance of the elected subject matter.

CELINE QIAN, PH.D.
PRIMARY EXAMINER

